



Tax Information Bulletin

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California State Board of Equalization
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New tax rates to take effect on July 1, 2008

Voters in four cities in California have approved new transactions (sales) and use taxes (district taxes) that are effective July 1, 2008. The new rates apply only within each city's incorporated limits. The tax rates outside the incorporated city limits will remain the same.

City of El Cerrito 8.75%

The City of El Cerrito, located in Contra Costa County, approved a 0.50% City of El Cerrito Street Improvements Transactions and Use Tax, (ECSI/175) which will increase the tax rate within city limits to 8.75% from 8.25%.

City of Reedley 8.475%

The City of Reedley, located in Fresno County, approved a 0.50% City of Reedley Public Safety Transactions and Use Tax (RDPS/177), which will increase the tax rate within city limits to 8.475% from 7.975%.

City of Sanger 8.725%

The City of Sanger, located in Fresno County, approved a 0.75% City of Sanger Public Safety Transactions and Use Tax (SGPS/179),

which will increase the tax rate within the city limits to 8.725% from 7.975%.

City of Seaside 8.25%

The City of Seaside, located in Monterey County approved a 1.00% City of Seaside Transactions and Use Tax (SEAS/180), which will increase the tax rate within the city limits to 8.25% from 7.25%.

Is your address in the city limits or unincorporated county?

You can verify whether your business is located within a city that has a district tax before collecting the increased tax rate. District boundaries are generally defined by city and county lines. Many California zip codes overlap city and county lines. To determine which district taxes affect your sales, visit the BOE's website: www.boe.ca.gov. Under Tax Topics select Sales and Use Tax; under Major Items select Tax Rates - Cities & Counties. This webpage includes a link titled, database of addresses, developed by some cities to identify addresses located within their city limits.

For more information

For information on district taxes,

please see publication 44, *Tax Tips for District Taxes*. For updated tax rates throughout California see publication 71, *California City and County Sales and Use Tax Rates*. You can download publications from our website at www.boe.ca.gov, or call our Taxpayer Information Section listed on page 4.

If you generate hazardous waste, be aware of the applicable fees

If you "generate" five or more tons of hazardous waste at any individual site or location in a calendar year, you are required to register with the Board of Equalization's Environmental Fees Division and pay the annual Hazardous Waste Generator Fee. Hazardous waste includes manifested hazardous waste and, effective July 1, 2007, manifested and non-manifested treated wood waste.

The use of a waste hauler, hazardous waste contractor, or environmental cleanup company to remove your hazardous waste will not relieve you from liability for the generator fee.

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For more information on the generator fee, including reporting requirements and fees, please visit our website at www.boe.ca.gov under Special Taxes and Fees or contact the Environmental Fees Division at 916-323-9555.

Taxation of flavored malt beverages

On January 24, 2008, the Board of Equalization (BOE) voluntarily withdrew from the Office of Administrative Law's (OAL) consideration regulations intended to implement the taxation of flavored malt beverages (FMB) as distilled spirits. The OAL notified the BOE of certain minor procedural and clarity issues with the draft regulations that necessitated this action. The BOE withdrew the FMB regulations from OAL in order to make the changes and additions to those regulations dictated by OAL.

FMB also known as "alcopops" are defined by Federal regulations as malt beverages in which the majority of alcohol is the product of brewing. The regulations clarify the definition of distilled spirits, create a rebuttable presumption that non wine alcoholic beverages, like FMBs, are distilled spirits, not beer, and create a procedure for rebutting the presumption. Currently, beer and beer products are taxed at 20 cents per gallon and distilled spirits are taxed at \$3.30 per gallon.

The review and approval process for the modified regulations includes a public comment period by interested parties and the approval of the elected Members of the Board of Equalization. Upon the Board's adoption of the revised regulations they would again be submitted to the OAL for another 30-day approval period.

For the latest information on the revised regulations and status of the approval process, please refer to our FMB webpage at: www.boe.ca.gov under Special Taxes and Fees.

The time is now...e-file today!

Have you wanted to try a different way to file your sales and use tax return? We have just the solution for you, e-filing! It's quick, easy, and free if you use our BOE-file system. The BOE-file system has new and improved features to better serve you. The new Express Login takes you straight to e-filing your sales and use tax return with just your account number and the unique Express Login code printed on your return. In addition, our e-filing and e-client registration processes are now streamlined which will give you more time for the things you really enjoy!

Filing your sales and use tax return has never been easier, faster or more convenient, give it a try! That's all we ask.

Several e-filing options await you...visit our website at www.boe.ca.gov and click on the e-file logo and select sales and use tax e-filing for the list of approved service providers.

The choice is yours, e-file today!

Electronic Benefit Transfer cards

The Electronic Benefit Transfer (EBT) program is an electronic funds transfer system similar to a "debit card" allowing recipients to purchase products that are approved through the government benefits program. EBT has been implemented in all states since June of 2004.

Using the EBT, an individual can purchase hot meals from restaurants. Since the Food Stamp Restaurant Meals Program was created to sell hot meals using the federally sponsored EBT, they are making sales to the U.S. government and are exempt from sales tax. Since the federal government reimburses the retailer for the EBT purchases, normally taxable items, such as carbonated soft drinks, qualify as exempt sales to the United States government.

For additional information please visit our website at www.boe.ca.gov or contact our Taxpayer Information Section listed on page 4.

Herbal products are taxable if they make medicinal claims even if the claim is in a foreign language

Sales of herbal products, including teas and tea capsules are subject to tax if:

- Medicinal claims are made on the label or packaging, or in catalogs, brochures, or other informational material distributed with the products, or
- The products are labeled, packaged, or otherwise marketed as food supplements or adjuncts. (An adjunct is a food additive.)

Medicinal claims do not have to be made in English for tax to apply to the sale of the product. Accordingly, tax applies to sales of herbal products having no medicinal claim in English, but a medicinal claim is made in a foreign language on the label or packaging, or in catalogs, brochures, or other informational material distributed with the products.



For additional information, please see Regulation 1602, *Food Products*, available from our website at www.boe.ca.gov or by calling our Taxpayer Information Section listed on page 4.

Selling cigarettes without a valid stamp?

Did you know that if you sell cigarettes without a valid tax stamp you can face a criminal citation, fines and even have your privilege of selling cigarettes and tobacco products revoked for up to five years?

Cigarette and tobacco taxes are an important source of funding for essential services provided by the government. Tax stamps are purchased by cigarette distributors and applied to each package of cigarettes with the funds remitted to the BOE.

You, the retailer, are legally responsible for ensuring that the cigarettes you sell contain valid tax stamps and the tobacco products have been properly taxed. Cigarettes purchased through sources other than licensed California distributors or wholesalers are often found to have no stamp or a counterfeit stamp and are illegal to possess or sell.

For additional information please see publication 93, *Cigarette and Tobacco Products Taxes*, available from our website at www.boe.ca.gov or by calling our Taxpayer Information Section listed on page 4.

Are you charging more than your cost for shipping and delivery?

Transportation charges for shipment of taxable merchandise are generally not taxable if:

- The charges are separately stated,

- The transportation is made by facilities other than that of the retailers, such as the U.S. mail, an independent contract or common carrier,
- The merchandise is shipped directly to the purchaser, and
- The amount charged is the actual cost of the transportation.

The BOE's audit staff is finding that businesses frequently charge more for shipping than their actual cost. The amount in excess of the actual cost of shipping must be included in your taxable sales. In other words, any markup applied to the actual cost of the shipping is taxable, and should be maintained in your records on a transaction-by-transaction basis.

For more information about how tax applies to shipping charges, you may download a copy of publication 100, *Shipping and Delivery Charges*, or Regulation 1628, *Transportation Charges*, from our website at www.boe.ca.gov, or call our Taxpayer Information Section listed on page 4.

Construction contracts for solar energy systems

Regulation 1521, *Construction Contractors*, has been revised to explain that a construction contract to furnish and install a solar energy system involves furnishing and installing both materials and fixtures.

Items classified as "materials":

PV cells, solar panels and solar modules (including solar thermal panels and solar electric PV panels), are considered materials when they are installed as roofing, skylights, wall panels, or windows. Examples include PV integrated skylights, PV panels used as a roof on a parking lot shade structure, and PV integrated roofing tiles.

Other materials include, but are not limited to, wiring, wiring harnesses, strapping, and mounting systems. Mounting systems include rack framing brackets that are installed on roofs.

Items classified as "fixtures":

PV cells, solar panels and solar modules (including solar thermal panels and solar electric PV panels), are considered fixtures when they are an accessory to a building and do not lose their identity as accessories when installed. Examples include rack mounted solar panels installed on roofs and solar panels used in free standing solar arrays.

Other fixtures include, but are not limited to, terminal boxes, DC and AC disconnect boxes, inverters, transformers, batteries, and pumps.

Charges for labor to affix solar panels purchased in a completed condition, to a mounting system are not subject to tax. Contractors furnishing and installing solar energy systems that include fixtures are required to hold seller's permits. For more information about how tax applies to construction contractors, see Regulation 1521 available from our website at www.boe.ca.gov, or by calling our Taxpayer Information Section listed on page 4.

Relief from penalty for late payments or returns

It is possible to have interest or penalty charges (or both) waived under limited circumstances. You may apply for relief from penalty charges if, because of circumstances beyond your control, you:

- Are unable to file your return or make a tax payment on time, or

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• Are unable to make a payment by electronic funds transfer (applies to taxpayers who are required to pay by EFT).

If you wish to file for relief from penalty you must file a statement with us stating the facts that apply. Use BOE-735, *Request for Relief from Penalty*. We will review your material and determine if the penalty can be waived. If you are relieved of the penalty charges, you must still pay the interest due on late return payments and prepayments.

If your payment or return filing was late because of failure to exercise ordinary care, because of willful neglect, or lack of funds, you will not be granted relief from the penalty.

Late penalty imposed in error

If you mailed your payment or return on time but we show it was late, you may file a BOE-135-A, *Declaration of Timely Mailing*, stating that the payment in question was mailed on time, was properly addressed, and included sufficient postage.

If you made your payment by electronic funds transfer (EFT) on time but we show it was late, you may file a BOE-129-EFT, *EFT Transmission Declaration*, stating that the payment in question was made on time.

If we conclude that you did mail your payment or return on time, or the EFT transmission was on time, we will correct the records to show that no late penalty or interest is due. As proof of the timely mailing or filing of your return, we may need to examine your records or bank account.

For relief of penalties and interest resulting from other situations such as disaster, reliance on incorrect written advice, errors or delays caused by the BOE or the

Department of Motor Vehicles, please refer to publication 75, *Interest and Penalties*. Our publications and forms are available on our website at www.boe.ca.gov or by calling our Taxpayer Information Section listed below.

Prepared cold food products may be taxable

Many people assume that all prepared cold food products are exempt from tax. If you sell cold food products and your customers consume them at dining facilities provided at your place of business (they "dine in"), these sales are subject to tax.

You are providing dining facilities if:

- You provide your customers with tables and chairs or counters, or
- You are located in a mall or shopping center in which your landlord provides a common area for dining (such as a food court) and you pay your landlord for these services.
- You provide your customers with returnable trays, glasses, dishes or other tableware along with their cold food.

For more information about the taxable sales of food, please refer to publication 22, *Tax Tips for the Dining & Beverage Industry*. Our

publications are available on our website or by calling our Taxpayer Information Section listed below.

Small business fairs

To help you with the ins and outs of running your business, we've developed a free "one-stop-shop" event for small business owners. Representatives from government agencies and nonprofit organizations will be there to assist you in learning how to manage a successful business. Be sure to check www.boe.ca.gov for the 2008 schedule of small business fairs.

New or revised reference material

Revised Publications

- 82 Prepaid Sales Tax and Sales of Fuel 1-08
- 90 Environmental Fee 1-08
- 94 Occupational Lead Poisoning Prevention Fee 1-08
- 118 Selling Food in Vending Machines 2-08

Revised Translated Publications

- 22-K Dining and Beverage Industry (Korean) 3-06
- 71-S California City and County Sales and Use Tax Rate (Spanish) 4-07
- 79B-S California Use Tax (Spanish) 4-07

For More Information

All telephone numbers are toll-free

Internet	www.boe.ca.gov ■ www.taxes.ca.gov
Taxpayer Information Section	800-400-7115 ■ TDD/TTY: 800-735-2929
Requests for Fax Copies	800-400-7115 (Choose automated services)
Seller's Permit Verification	888-225-5263 ■ www.boe.ca.gov
Taxpayers' Rights Advocate	888-324-2798 ■ www.boe.ca.gov
Tax Evasion Hotline	888-334-3300
State Legislation	www.leginfo.ca.gov/bilinfo.html

Staff are available from 8:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, except state holidays.